

REF: DISTRIBUTION

ORIGIN/ACTION

DEPARTMENT OF STATE

AIRGRAM

Pal 23-8 4s

RS/R REP AF ARA

Original to be Filed in _____ Decentralized File

FILE DESIGNATION

EURY FE NEA CU

381 LIMITED OFFICIAL USE

A-1025

INR E P IO

HANDLING INDICATOR

DEPARTMENT OF STATE A/CDC/MR

L FBO AID

TO : Department of State

REVIEWED BY *MC for MA* DATE *3.13.81*

1/cPR 54

INFO: American Embassy Moscow

RDS ☐ or XDS ☐ EXT. DATE

TS AUTH. REASON(S)

ENDORSE EXISTING MARKINGS ☐DECLASSIFIED ☐ RELEASABLE ☒RELEASE DENIED ☐ July 2, 1971

PA or FOI EXEMPTIONS

AGR COM FRB INT

FROM : USUN

LAB TAR TR XMB

SUBJECT : Judge Dollinger Issues Decision Permitting Picketing at Soviet Mission to the United Nations

AIR ARMY NAVY OSD

REF : USUN 1426, USUN 1445

USIA NSA CIA

10 3 16

SUS FAI NSC

1 1 6

SUGGESTED DISTRIBUTION

2

30

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

10

The New York Law Journal of June 28, 1971 carried Judge Isidore Dollinger's decision permitting up to twelve persons from the Jewish Defense League and the Student Struggle for Soviet Jewry to picket in a "peaceful and orderly" manner in the immediate vicinity of the Soviet Mission to the United Nations. Copies of the decision are attached.

In brief, Judge Dollinger denied the request of the 67th Street landlords and tenants that the court enjoin the New York City Police Department from barricading 67th Street between Third and Lexington Avenue and granted their request that demonstrations by the Jewish Defense League and the Student Struggle for Soviet Jewry in the vicinity of the Soviet Mission to the United Nations be forbidden, except that up to twelve members of these organizations may engage in peaceful and orderly picketing in the immediate vicinity of the Soviet Mission at any time.

The court emphasized that the relief granted was temporary and, in view of the constitutional issues involved, urged that the residents move to bring the case to trial soon. Judge Dollinger said that his decision had as its aim the temporary protection, pending a trial, of the conflicting rights of the demonstrators to free speech and assembly under the First Amendment and of the residents to enjoy the use of their property.

The landlords and tenants have prepared a proposed order to implement the decision of the court. The New York City Police Department and the U.S. Attorney's Office have also prepared proposed orders for Judge Dollinger's signature. The Mission was consulted by Milton Sherman, the Assistant U.S. Attorney, who handled this matter for the Decentralized 7/2/72

LIMITED OFFICIAL USE

For Department Use Only

Date:

Initials:

Drafted by:

SDMartin:mc

Clearances:

RRosenstock

Skuttner

JGlennon

United States Government, before he drafted the order proposed by his office. The Mission suggested that the proposed order spell out that no fingerpointing or other objectionable gestures be permitted to the twelve picketers in the immediate vicinity of the Soviet Mission to the United Nations. These suggestions, and several other suggestions by the Mission, were incorporated into Mr. Sherman's proposed order. We also suggested including language making it clear that any violation of the order by demonstrators would cause the automatic termination of the grant of permission to the 12 demonstrators to be on the block. Sherman agreed to consider this further but said he is inclined not to include it on the grounds it might scare Judge Dollinger off from signing our order as drafted.

A copy of Judge Dollinger's order will be forwarded to the Department when it becomes available to the Mission.

The Government will be able to obtain a contempt citation if the order is violated by the JDL or SSSJ.

Action Requested: The Department is requested to consider whether the United States Government should appeal Judge Dollinger's decision (the appeal would be from the order). The parties to the action have 30 days, running from the time each receives notice that the order implementing the decision has been signed, in which to file an appeal.

Mr. Sherman expressed the opinion that the United States Government should not appeal Judge Dollinger's decision. He pointed out that the Government succeeded in blocking the residents' efforts to limit police action designed for the protection of the Soviet Mission and in limiting demonstrations in the general area of the Soviet Mission, both desirable goals. He believes the limited picketing permitted by the court is an acceptable price to pay in the circumstances. He also noted that this is a preliminary injunction, designed to be temporary only, and that ordinarily the parties to an action wait for a final determination before appealing to a higher court. He made clear, however, that in this case the parties have the right to appeal from the decision if they wish. It is also Mr. Sherman's view that the appellate court is likely to confirm Judge Dollinger's decision or, if it overrules it, it is more likely to do so in a way which will negate what the Government has achieved in the lower court rather than to further limit picketing by refusing to allow the 12 pickets in the immediate vicinity of the Soviet Mission.

The Mission on balance recommends against appealing this decision. We are impressed by Mr. Sherman's view that we are not likely to obtain a favorable change in Judge Dollinger's decision on appeal. We also believe that an unfavorable decision in the appellate court, particularly if it is based on the First Amendment, would make it more difficult to obtain a 100-or 500-foot rule in the legislation regarding demonstrations at foreign missions to international organizations which we understand is under consideration for presentation to Congress. We would prefer to emphasize to Justice/need to enact 100-500 foot legislation as soon as possible. On the other hand, taking an appeal from this decision would demonstrate to the

LIMITED OFFICIAL USE

-3-

A-1025

Soviet Mission that the United States Government is taking every possible step to eliminate picketing in the immediate vicinity of the Soviet Mission. At the same time, we believe we have already shown the Soviet Mission that by becoming a party to this action the United States Government has taken every reasonable step to try to limit picketing in the immediate vicinity of the Soviet Mission and can in good conscience maintain that a decision not to appeal was made on advice of counsel.

BENNETT

at
Attachment: a/s

3 copies

LIMITED OFFICIAL USE